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1941.

File No. O. Insolvency /41.

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Legal DEPARTMENT
A BRANCH

Subject:—

p. 9 Opinions under the Presidency Towns Insolvency Act, 1909.

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Std. Scott. Slip 24 P. e.

332-A.

C O N T E N T S.

Legal Department File No. C. Insolvency/41.

S.No.	Compilation No.	Subject	Pages.
		Opinions under the Presidency Towns Insolvency Act.1909.	
1.	R.I.No.1058 dt.17-8-41. C.No.107 dt.8-8-1941.	Severing of various amendents suggested by the official Assignee of the High Court - to the Act.	1 - 8
2.	C.No.6124 dt.16-7-41.	------ do ------	
		Whether Central or Provincial Legislation is preferable.	9 - 10

M.V.V.
S1/A.

Submitted.

The B.L.A. is requested to offer his remarks on the various amendments suggested by the Official Assignee to the Presidency Towns Insolvency Act, 1909. The amendments are discussed seriatim below:

1. Section 9. It is proposed to insert the words "cross demand" after the words counter claim or set-off" in the proviso to section 9 (1). The amendment suggested does not appear to be necessary. The word "set-off" has been defined in Black's Law Dictionary p.1618 to mean a counter claim or cross demand. The words used in the proviso to sec.9(1) are therefore sufficiently wide to cover and include a cross demand.

2. Section 9(A). It is proposed to add the words " or the court" after the words "to the satisfaction of the creditor or his agent." The amendment is intended to empower the court to decide whether the security offered by the debtor is sufficient or not. The amendment appears desirable and may be made.

3. Section 33. It is proposed to insert a new sub-sec.(4) in sec.33 providing that the insolvent shall during his insolvency notify the Official Assignee any change in his address and also of the nature of his employment etc. The provision appears necessary and the amendment may be made.

4. Section 35((1). It is proposed to insert in section 35 (1) after the words "after the order of adjudication and the words shall whenever ordered so to do by the court on the application of the Official Assignee or a

P.T.O.

Creditor who has proved his debt". It is also proposed to add a new sub-sec(2) providing a penalty for failure so to apply by making it a contempt of the court. The amendment is inteded to make it compulsory for an insolvent to make such an application for discharge, which he is otherwise disinclined to do in many cases. (Pl. see para 9 on pages 11-18 ante). The amendment proposed in sub-sec.(1) of sec.38 appears necessary and may be made. However it does not appear necessary to follow the provisions of sec.119(1) of the Australian Act and make the offence a contempt of court. It would suffice to provide on the lines of sections 41 and 43(1) of the Provincial Insolvency Act, 1920 that if an insolvent fails to make an application for an order of discharge within the period specified by the court, the order of adjudication should be annulled and the provisions of section 23 shall apply accordingly.

5. Section 40 is proposed to be amended by inserting the words "unless the court for special reasons otherwise directs" after the words "who has proved." The object of the proposed amendment would dispense with the serving of the notice on such of the creditors as the court desires. The amendment appears to be free from objection and may be made.

6. Section 49:- It is proposed to amend sec.49(1) so as to delete the words "for each such clerk and one hundred rupees for each such servant or labourer". The object is that both the clerk and the servant or labourer should be entitled to a total sum of three hundred rupees each in respect of his salary or wages. The amendment proposed is ambiguous and is capable of interpretation that the maximum salary and wages of all clerks, servants and labourers shall not exceed three hundred rupees. The object would be gained by deleting the words." and one hundred rupees for each such." It is also proposed to limit the amount of rent payable under clause (c) of sec. 49 (1) to one month. The amendment appears to be free from objection.

7. Section 54 :- It is proposed to add an explanation that any such application under sec. 54 by the Official Assignee may be made by writing a letter. The amendment appears to be desirable and is free from objection.

8. Section 56:- It is proposed to recast sec. 56 so as to shift the onus of proving that the transfer was bona fide, from the Official Assignee to the transferee himself. The amendment appears to be free from objection.

9. Section 57:- It is proposed to amend the proviso to sec. 57 by adding notice of any available act of insolvency committed by the debtor. It is also proposed to add at the end that the person with whom the transaction took place knew that the transaction x was in good faith and in the ordinary course of business. The object of the amendments is to provide more safeguards to insuring a bona fide transaction. The amendments appear desirable and may be made.

P.T.O.

10. Section 57-A:- It is proposed to insert a new section 57 A. This sectio follows the lines of sec. 47 of the English Act which gives effect to the ruling in Cohen V. Mitchell, 25 Q.B.D. 262,267. It was laid down in that case that until the trustee intervenes all transactions made by a banker after his bankruptcy with any person dealing with him bona fide and for value in respect of property acquired by the insolvent after his adjudication, whether with or without the knowledge of such adjudication, are valid against the trustee. Office has no remarks to offer on the proposed section.

11. Section 68:- It is proposed to insert a new clause (a-1) in sec. 68(1) giving power to the Official Assignee to compromise himself any debts not exceeding Rs. 1,000 due to the insolvent. A consequential change is proposed in clause (h) by inserting the word 'other' before the word 'debts'. The amendment appears desirable in view of the practical difficulties experienced as Official Assignee and may be made.

12. Section 68A:- It is proposed to insert a new section 68A. This section gives power to the Official Assignee to inspect and check an inventory of goods of an insolvent which are held by any person by way of pledge, bond and other security. The amendment appears to be free from objection. The proper place for the proposed amendment would however appear to be before sec. 68 as sec. 67A rather than after sec. 68.

13. Rule 19A in Second Schedule to the Act:- It is proposed to insert a new rule 19A in

the Second Schedule to the Act to provide that if any of the proper parties refuses or fails to execute the conveyance the court may direct the Official Assignee to execute the document in place of such party and such execution by the Official Assignee shall be a valid execution by the party itself. Sec.48 provides that the rules in the Second Schedule shall be observed with regard to the mode of proving debts etc. and the other matters referred to in that schedule Rule 19 in the Second Schedule occurs under the heading Taking Accounts of Property Mortgaged, and of the Sale thereof. Rule 19A proposed to be inserted will therefor be valid with regard to the sale of property mortgaged. The amendment appears to be in order.

Sd.
4-4-41.
S. S.

Sd.
4-4.
S. A. T.

The amendments proposed by the High Court have been carefully scrutinized and they are unobjectionable from the legal point of view. Some of the amendments may require redrafts. The form of the amendments may be settled after Government has decided to undertake legislation.

2. Reply may be:

"The draft amendments suggested by the High Court appear to be suitable from the legal point of view. The exact form of draft may be settled after Government decides to undertake legislation for the purpose."

Sd.
2/6.

D. S.

As in para 1 of S.A.S' note as amended.

Sd. 3/6.

R. L. A.

Sd.
5/6.

This file has been in the office since 17th. Feb. It should not have taken so long to dispose of.

Sd/-.

M. V. V.
24/4.

Office of the R.L.A.

The amendments proposed by the High Court have been carefully scrutinized and they are unobjectionable from the legal point of view. Some of the amendments may require redrafting. The form of the amendments may be settled after Government has decided to undertake legislation.

Sd/-.
G/C.
Remembrancer of Legal Affairs.

U.R. to R.D. No. 10-P. dated the 6th June 1951.

M.V.V.
26/6.

Office of the R.L.A.

The Presidency-towns Insolvency Act, 1909, in its application to the Province of Bombay has been amended by two Bombay Acts, namely by Bombay Act XX of 1933 and Bombay Act XV of 1939. Two of the amendments suggested by the High Court, namely those in sections 9 and 93 are in the provisions inserted in the Act by the Bombay Act XV of 1939. As these provisions are not in force in other Provinces, the amendments in these provisions will have to be made by Provincial legislation. It appears that the Act has also been amended in Bengal by Bengal Act XVIII of 1936(see footnote 1 on page 470 of Unrepealed Central Acts, Vol.V.), The Act may have been amended in other Provinces also. It is possible that the amendments suggested by the High Court may not be in keeping with the provisions of the Act as amended in other Provinces. I, therefore, think that, on the whole, Provincial legislation would, in this case, be preferable to Central legislation. Attention of the Home Department is, however, invited to paragraph 1(4) of the letter of the Government of India No.57-39-Judicial dated the 13th December 1940 in which Government of India have suggested that legislation in such cases should be undertaken only after consultation between the Government of India and the Provincial Government.

Sd/-

Sd/-

Examiner of Legal Affairs.

U.R. to H.D. No.6104, dated the 10th July 1941.

N.V.V.
24/6.